

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CRIMINAL NO. 13-mj-3044-DGW
)	
SEAN D. McGILVERY,)	
)	
Defendant.)	

**UNITED STATES OF AMERICA’S INITIAL RESPONSE
TO DEFENDANT’S MOTION TO RECONSIDER DETENTION ORDER**

The United States of America, by Stephen R. Wigginton, United States Attorney for the Southern District of Illinois, and James L. Porter, First Assistant United States Attorney, responds as follows to Defendant’s Motion to Reconsider Detention Order (Doc. No. 18) and moves for the continued detention of the Defendant pending trial, pursuant to Title 18, United States Code, Section 3142, as follows:

Response to Motion

1. At the outset, the United States notes that this motion is devoid of adequate factual information which would lead to the conclusion that any of the proposed plans for release are viable.

2. The United States is informed that while the S.M.A.R.T.S. Program may have a space, it may not be able to treat a person on methadone, funding may not be available, nor is it a secure facility. Based upon prior communications from the United States Probation Office, upon information and belief, due to sequestration and budgetary limitations, the USPO has inadequate funds to accommodate the Defendant’s request. Defendant has failed to assert in his motion that he can self-fund residential treatment, as defendants sometimes do, thus increasing the range

of options available to the Court as it considers its statutory obligation to ensure the safety of the community, to secure the appearance of the Defendant, and to protect the integrity of the process.

3. The United States would object to a release to un-named family members without a full home visit and criminal record check being done on these family members by the United States Probation Office. Notably, the allegations in this case indicate that the Defendant engaged in drug distribution activities in a shared family residence. To the extent the Court would be inclined to consider release to any family members, the United States would request an opportunity to question them under oath regarding their suitability to serve as caretakers of the Defendant.

4. In fact, Defendant has been afforded past access to drug treatment. A prior arrest resulted in “drug school,” and he was treated at a methadone clinic at the time of his instant arrest. Defendant has not provided this Court with any information which would indicate that he would likely successfully complete a course of treatment while on bond in light of his prior unsuccessful efforts.

WHEREFORE, the United States of Americas prays this Honorable Court to deny the motion as made on the grounds that it is inadequate to allow any party to evaluate its substance. Moreover, the motion fails to offer information or evidence designed to rebut the statutory presumption in favor of detention which exists by virtue of 18 USC 3142(f)(1)(C) for drug trafficking offenses involving a potential term of incarceration of ten years or more.

Continuing Reasons for Detention

1. The United States asserts that the Defendant is a flight risk and that no conditions or combination of conditions will assure the appearance of the Defendant for all proceedings in the case. Defendant faces an extremely long mandatory minimum jail term which could involve

mandatory minimum sentences which are further mandated to run consecutively to one another (Title 21, U.S.C. § 841(a)(1), (b)(10)(A) and § 846 and Title 18 U.S.C. § 924 (c); amounts of drug and presence and type of weapons shown on the search warrant inventory).

2. The United States asserts that Defendant is a danger to the community, as this Defendant has been involved in dealing heroin and other illegal drugs for a long period of time. Defendant is unemployed, has no legitimate sources of income, and would require funds to support his own habits and lifestyle.

3. The United States asserts that this Court has already found probable cause to believe that the Defendant is subject to the rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the Defendant or the safety of the community, as those terms are defined, Title 18, U.S.C. § 3142(e).

4. The United States asserts that there is a serious risk that the Defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or witnesses if he is released.

WHEREFORE, the United States of America respectfully requests that this Honorable Court continue the Order directing that the Defendant be detained until trial or for whatever other relief may be proper.

Notice of Intent to Use Proffered Evidence

If this case proceeds to a Detention Hearing, the United States of America hereby notifies Defendant of its intent to use and refer to information given by the Defendant in a proffer session. As the Defendant will no doubt be required to attempt to rebut the presumption for detention, the United States will invoke its right to fully and fairly inform the fact finder of the true nature of the Defendant's involvement in this case.

WHEREFORE, for all of the above-listed reasons, taken individually or cumulatively, the United States of America prays this Honorable Court to deny the Motion to Reconsider Detention Order and for whatever other relief may be meet and proper in these circumstances, pursuant to Title 18, United States Code, Section 3142(e).

Respectfully submitted,

STEPHEN R. WIGGINTON
United States Attorney

/s/ James L. Porter
JAMES L. PORTER
First Assistant United States Attorney
Nine Executive Drive
Fairview Heights, IL 62208-1344
Phone: (618) 628-3700
Fax: (618) 628-3730
E-mail: jim.porter@usdoj.dov

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2013, I caused to be electronically filed this United States of America's Initial Response To Defendant's Motion to Reconsider Detention Order with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following registered participants:

Defendant's Attorney –

Rodney H. Holmes

rdnyholmes@aol.com

Respectfully submitted,

STEPHEN R. WIGGINTON
United States Attorney

/s/ James L. Porter
JAMES L. PORTER
First Assistant United States Attorney
Nine Executive Drive
Fairview Heights, IL 62208-1344
Phone: (618) 628-3700
Fax: (618) 628-3730
E-Mail: jim.porter@usdoj.gov

cc: USPO